THE AUTHORITY OF VATTEL

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There is no more significant commentary on the growth of international law, both in precision and in comprehensiveness, than an estimate of the relative authority of the name of Vattel in the world of international relations a century ago and in that of today. A century ago not even the name of Grotius himself was more potent in its influence upon questions relating to international law than that of Vattel. Vattel's treatise on the law of nations was quoted by judicial tribunals, in speeches before legislative assemblies, and in the decrees and correspondence of executive officials. It was the manual of the student, the reference work of the statesman, and the text from which the political philosopher drew inspiration. Publicists considered it sufficient to cite the authority of Vattel to justify and give conclusiveness and force to statements as to the proper conduct of a state in its international relations.

At the present day the name and treatise of Vattel have both passed into the remoter field of the history of international law. It is safe to say that in no modern controversy over the existence and force of an alleged rule of international law would publicists seek to strengthen the position taken by them by quoting the authority of Vattel. As an exposition of the law of nations at a given period of its growth, the work can, it is true, lose nothing of its value, but in saying that it has thus won its place irrevocably among the classics of international law, we are merely repeating that it has lost its value as a treatise on the law of the present day.[1]

[1] It is true that the authority of Vattel was frequently quoted during the arbitration at The Hague of the Newfoundland fisheries question in the summer of 1910; but in that case the question turned upon the interpretation of treaties entered into nearly a century before, so that the authority of Vattel was, in fact,

What has brought about this change in the influence once so widely exerted by Vattel's treatise? Is it that the fundamental principles underlying his work have been discredited? Is it that new and more definite rules have come to take the place of those for which he so earnestly contented? Or, is it that both principles and rules as expounded and defined by Vattel have come to be so universally accepted that the mere statement of them is sufficient without further proof or authority?

The uneventful life of Vattel throws but little light upon his mind and character. He was born on August 25, 1714, at Couret, in the province of Neufchâtel, then belonging to Prussia. He studied classics and philosophy at Bâle and Geneva, and became sufficiently interested in the doctrines of Leibnitz to publish a defense of them in 1741. In the same year he went to Berlin to offer his services to Frederick II of Prussia, but failed to obtain the public office he sought. Two years later he went with the same object to Dresden, and finally succeeded in obtaining from the Elector, Augustus III, King of Poland, the position of counsellor of embassy in 1746. He was then sent to Bern as minister of the elector to that republic, and during the twelve years of his residence there he found time to publish several works, the chief of which, and the one upon which his reputation rests, appeared in 1758, under the title *Le Droit Des Gens ou Principes de la Loi Naturelle, Appliqués à la Conduite et aux Affaires des Nations et des Souveraines.* In the same year he was recalled to Dresden and made privy counsellor of the elector. Owing to failing health, he returned to Neufchâtel and died there on December 20, 1767.

The *Droit Des Gens* is not an original composition. The author's purpose, as he himself states in his preface to the work, was to popularize the larger and less accessible work of Wolff

cited as evidencing the state of international law at the period of the treaties, and the probable intent of the parties. Moreover, the writer must confess that only yesterday, at the sessions of the arbitral tribunal constituted by Great Britain and the United States to pass upon general outstanding claims between the two countries, the authority of Vattel was referred to in determining the law with regard to the responsbility of belligerent nations for the destruction of the property of neutral citizens located within the area of belligerent operations.

entitled *Jus Gentium*, which appeared in 1749. Vattel, however, did not borrow blindly, but followed his own plan and selected only such material as met with his approval, with the result that he felt he could affirm that his own work "differed greatly" from that of Wolff.

After an introduction setting forth the nature and general principles of the law of nations, Vattel divides his treatise into four books. The first of these deals with the internal character and organization of individual states, and, accordingly, belongs rather to the domain of political science and constitutional law than to that of international law. This section of the work is the least important of all, and might be dismissed without further comment, but for the fact that it illustrates strikingly the political theories of the author and shows us the source of the prejudices exhibited in the subsequent sections devoted to the law of nations. In this connection the principles borrowed by Vattel from Wolff will be referred to as if they were Vattel's own.

Vattel's theory of the origin of the state is built upon a conception of the law of nature which may be said to combine elements both of the scholastic theory and of the later social-contract theory. The state is a society of men who have united together to procure by their combined efforts their mutual welfare and advantage. The state is thus composed of persons who are "by nature free and independent, and who before the establishment of civil society lived together in a state of nature.[2] Accordingly, since liberty and independence are theirs by nature, they can only lose those rights by their own consent.[3] So far, the contract theory pure and simple. But later on, Vattel proceeds to show, just as Aquinas or Suarez might have done, that "man's nature is such that he is not sufficient unto himself but necessarily requires the help and intercourse of his fellows, both to preserve his existence and to perfect himself and live as befits a rational animal." From these premises Vattel deduces the existence of a natural society among men, the general law of which is that each member must help the others in so far as they have

[2] *Le Droit Des Gens, Préliminaires*, §4.

[3] *Ibid.*, loc. cit.

need and in so far as he can do so without neglecting what he owes to himself—"a law which all men must observe in order to live as becomes their nature and to conform to the design of their common Creator."[4] This instinct in man, leading him "necessarily" to unite in society under a law which he "must" observe in order to conform to the design of his Creator, is scarcely consistent with the *voluntary* contractual union of men who are "by nature free and independent."

Vattel's fondness for abstract reasoning leads him to discuss wholly imaginary situations. In considering the abstract proposition that a nation is bound to maintain itself in existence, he makes a complete circle in three short leaps, arguing that since by the social compact, in virtue of which the state is constituted, each individual pledges himself to procure the good of all, and since this obligation can only be fulfilled by the continuance of the social compact, therefore the social compact must be continued. Nevertheless, as the social compact is a voluntary one, the occasion may arise when, for grave reasons, it may be broken; but in general "so long as the body politic exists, the whole nation must endeavor to maintain it in existence"[5]—a conclusion to which no meaning can be attached.

Sovereignty, according to Vattel, resides ultimately in the body politic, which delegates the exercise of it to a definite person or persons in accordance with the constitution of the state. This constitution is adopted by the nation itself and may be changed or set aside by the nation for good reasons. No difficulty arises if the whole nation desires to change the constitution. But suppose that only a part of the people desire the change? In this case "the opinion of the majority must pass without question as that of the entire nation."[6] This statement of democratic principles was certainly in advance of the theories upon which most of the continental governments of that period maintained their power, and it is doubtless to be referred to Vattel's Swiss origin. More democratic still is Vattel's state-

[4] *Ibid.*, §10.
[5] *Ibid.*, bk. i, chap. ii, §16.
[6] *Ibid.*, bk. i, chap. ii, §33.

ment that those to whom the legislative power is intrusted, whether prince or assembly, or both together, are not competent to change the fundamental laws or constitution of the state unless that authority has been specially conferred upon them.[7] Moreover, if the prince become a tyrant and fail to respect the constitution, the people are justified in withdrawing from their obedience to him.[8] But this fundamental principle of democracy is circumscribed by the warning that such a grave step is to be taken only by the nation as a body, and that it is fraught with danger to the state and must only be ventured upon under stress of grievous evils.[9]

On the subject of religion Vattel, while advocating the principle of liberty of conscience and toleration, feels that he must subject the Church to the secular authority of the State. "Since, he says, "the obligation of working earnestly to know God, to serve Him, and to honor him from the bottom of one's heart is imposed upon man by his very nature, it is impossible that by his engagements towards the body politic man should be excused from that duty or deprived of the liberty which is absolutely necessary to fulfill it. It follows, therefore, that liberty of conscience is a natural right and is inviolable. I feel it a disgrace to mankind that a truth of this nature should require proof."[10] Nevertheless, since a nation is a moral person, it is under the same obligation as individual men to adopt some form of public religion. Over this state religion the sovereign has, by the law of nature itself, full authority. Its ministers are subject to him in all matters, so that if an individual minister feels that he cannot conform to the will of the sovereign in the matter of doctrine and liturgy, "he must resign his position and look upon himself as one having no vocation for it." This call for abject submission on the part of the clergy is followed by a vigorous denunciation of the papacy as an institution claiming to be independent of state control.

[7] *Ibid.*, §34.
[8] *Ibid.*, iv, §51.
[9] *Ibid.*, loc. cit.
[10] *Ibid.*, xii, §128.

Enough has been said to show that Vattel, while liberal and, for his time, almost radical in his theories of popular rights, was timid and cautious in the practical application of them. The love of liberty common to his Swiss countrymen was strong in him, but he had neither the originality of thought nor the boldness of will to undertake the solution of the grievious political and social evils that were crying for reform during the half-century preceding the French Revolution. Doubtless his long years in the service of Augustus III may be responsible for his tendency to trust overmuch in the virtues proper to sovereigns but not always possessed by them. As an instance of his complete failure to understand actual conditions, it is sufficient to refer to his extravagant praise of the English constitution and government. In describing the duties of a nation, Vattel speaks of England in the following terms: "An admirable constitution puts each citizen in a position to contribute to the welfare of the state, and spreads abroad that spirit of true patriotism which devotes itself zealously to the public good."[11] And in describing the duties of a sovereign he says: "How refreshing it is to see the English king render an account of his chief acts to parliament, assure that representative body of the nation that he has no other object in view than the glory of the state and the welfare of his people, and thank affectionately all those who labor with him for such worthy objects."[12] It is true that such eulogies can be paralleled in Blackstone's *Commentaries*, but one has only to turn a dozen pages of the history of the reform movement in England to find how far they were from describing the real state of things.

As the law of nature is the basis of Vattel's theory of the state, so it forms the basis of his system of international law. Since men are subject to the law of nature, so nations, whose common will is but the result of the united wills of their citizens, and which possess, in consequence, a moral or corporate personality, are likewise subject to the law of nature.[13] Consequently, in

[11] *Ibid.*, ii, §24.
[12] *Ibid.*, ii, §39.
[13] *Ibid.*, Préliminaires, §5.

order to determine what are the rules of international law, it is merely necessary to apply the law of nature in a proper and scientific way to the affairs and the conduct of nations or of sovereigns.[14] These rules differ from those prescribed by the law of nature to individual men on certain points, owing to the fact that the application of the law of nature to states must be modified somewhat by the peculiar corporate personality which they possess. The result of this purely deductive process of applying the law of nature to nations gives us what Vattel calls the Necessary (or Natural) Law of Nations,—an abstract conception wholly dissociated from the facts of national life.[15] The qualification "necessary" is due to the fact that nations are unconditionally bound to observe the rules contained in it. So far Vattel is merely repeating the fundamental conception upon which the great treatise of Grotius was based.

But the question naturally arises, who is to be the interpreter of this natural and necessary law of nations? Our experience with our fellow man shows us that while all men recognize certain general principles of right and wrong which may be said to constitute the law of nature, at the same time individual men frequently differ as to the application of those principles to specific cases. Here, as between man and man, the state is the arbiter, and enacts civil laws which may in a sense be regarded as the state's interpretation of the law of nature. But since there is no supreme authority capable of deciding, as between nation and nation, upon the application of the natural law to specific cases in which there is a dispute as to its application, it follows that, in so far as nations are concerned, it is necessary to admit some relaxation in the application to nations of the law of nature. The result is that side by side with the necessary law of nations there exists the voluntary law of nations which consists in the modifications which must be admitted in the rigorous application of the law of nature to nations by reason of the fact that there is no acknowledged interpreter of it. In matters where the right or wrong involved stands out clearly, that is to say, in

[14] *Ibid.*, Preface, vi.

[15] *Ibid.*, Préliminaires, §7.

matters where the application of the law of nature is so direct as to leave no room for doubt, the voluntary law will coincide with the necessary (or natural) law; but in other matters where the inference from the law of nature is not clear, each nation must be allowed its own interpretation of that law, with the result that in some instances the strict precepts of the law of nature may be evaded. Just where the line is to be drawn is a further question and one which discloses the weakness of a system which confounds the positive with the moral law.

The above explantion of the voluntary law of nations goes considerably beyond that of Vattel, whose obscure language on the subject has somewhat puzzled his commentators. As nature has ordained that men should live in society, he says, so she has ordained that nations should form a larger society, of a similar but not identical character. The first general law of this society of nations is that each nation must contribute to the welfare and advancement of other nations in so far as lies within its power. The second general law is that each nation must be allowed to retain that liberty and independence which it holds from nature. It follows, therefore, that "it is for each nation to be the judge of what its conscience demands of it, or what it can or cannot do, or what it is convenient or inconvenient for it to do; and, accordingly, each nation must consider and decide whether it can perform a certain duty towards another without failing in its duty towards itself."[16]

But this right on the part of each nation of personally interpreting its duties does not hold where a nation is under an obligation to another "in a specific matter, for a specific reason which does not depend upon its judgment." "In order to make this clear" (sic), Vattel explains that there are two classes of obligations—those which are binding *in foro interno*, and those which are binding *in foro externo;* only the latter giving rise to corresponding rights on the part of other persons. Now these rights are *perfect* when they carry with them the auxiliary right of constraint; otherwise, thay are *imperfect* and are dependent upon voluntary fulfilment by the other party. It is the principle

[16] *Ibid.*, §13, 14, 15, 16.

that, in those matters where all *imperfect* rights and obligations are involved force cannot be used to constrain a free state, which gives rise to the rules constituting the voluntary law of nations; and since all nations must recognize that the rules of the voluntary law are essential to the society of nations as it actually exists, it is presumed that nations have given their consent to them.[17]

It is evident that the above distinctions lead us nowhere. The question still remains, what is to determine whether or not a given right carries with it the auxiliary right of constraint and is, therefore, a *perfect* right? Vattel does not answer it, so that the voluntary law of nations remains to the end a deductive and theoretical system.[18]

In addition to the voluntary law of nations there is the conventional law or the law of treaties, which is the result of the various agreements into which nations may enter. But since treaties only bind those who are parties to them, the conventional law of nations is not a universal but a "special" law (droit particulier). Moreover, there are certain rules and practices consecrated by long usage and observed by nations "as a sort of law" which constitute the customary law of nations. The details of this law Vattel says do not belong "to a systematic treatise on the law of nations." In so far as these customs are indifferent in their nature or useful and reasonable, they are binding upon nations which have given their implied consent to them; but if they contain anything which is unjust or unlawful, they are of no force, since nothing can oblige a nation to violate the natural law.[19]

Having distinguished the various species of the law of nations, Vattel proceeds to state the method which he proposes to follow in his treatise. On each subject dealt with he will first lay down

[17] *Ibid.*, §17, 21.

[18] It may be observed that the term "voluntary" is not used by Vattel in the same sense in which it was used by Grotius. The *jus voluntarium* of Grotius received its obligatory force "from the will of all or of many nations;" it consisted in the actual customs in force between nations and the principles generally recognized by them as belonging to the natural law; it was, therefore, a law to be ascertained synthetically from the facts of international life.

[19] *Ibid.*, §24, 25, 26.

the precepts of the natural or necessary law which are binding upon the conscience of nations, and then show why and to what extent these precepts must be modified by the voluntary law which is binding before the world. As for the conventional and customary law, they only constitute special law and there is no danger of either of these forms being confused with the natural law. Unfortunately, Vattel chooses to speak of the voluntary law as being based upon the "presumed" consent of nations and as, therefore, forming, together with conventional and customary law, a branch of the positive law of nations.[20] This classification has tended to confuse the character of the voluntary law and to suggest that it is of the same empirical character as the conventional and customary law, whereas, in fact, it is entirely distinct from them.[21]

Vattel's method, therefore, is entirely deductive. He intends to lay down what *ought* to be the law if we accept the fundamental principles above set forth; and as these principles embody a moral obligation independently of man's will, Vattel substitutes the word *is* for *ought.* If the practice of nations is frequently quoted in support of a given proposition, it is merely because Vattel regards it as confirming the truth of a rule which he has already established *a priori;* the real test of the lawfulness or unlawfulness of a given act is always its conformity with the law of nature.

[20] *Ibid.*, §27.

[21] In order to make somewhat clearer the various species of the law of nations which constitute Vattel's system, the following table has been prepared, showing the relation between them and the source from which they have been derived.

Law of nations	*Universal*—as deduced from the law of nature.	*Necessary*—the direct application of the law of nature.
		Voluntary—a relaxation in the rigor of the natural law in favor of the liberty of nations.
	Special—as founded upon the actual consent of particular nations.	*Conventional*—embodied in treaties, expressing the explicit consent of nations.
		Customary—embodied in customs, expressing the implied consent of nations.

It is evident that a system of international law into which the law of nature enters as the chief constituent element cannot stand the test of critical analysis. There are two main objections which have been raised against such a system: first, that it does not distinguish between the rules which are actually in force between nations and those which, as being more consonant with ideal justice, *should* be in force between nations; secondly, that no two persons are agreed as to precisely what rules are to be included in this ideally just code, so that the content of international law must vary with each individual exponent of it. It is true that neither of these objections could fairly have been urged in the time of Grotius, nor doubtless in the time of Vattel. In 1625, when the *De Jure Belli et Pacis* appeared, by far the larger part of the field of international relations was ungoverned by any fixed rules, so that Grotius would have been clearly remiss in the fulfilment of his high purpose had he confined himself merely to determining the existing practice of nations. If he and his followers assume to pronounce authoritatively that certain rules deduced from what they considered the law of nature were binding upon nations independently of their consent, we must rather be grateful to them for their boldness and high-mindedness than critical of their unscientific spirit.

The nineteenth century marks the transition on the part of the great body of English and American writers from the Grotian school, in which the law of nature forms a constitutive element of international law, to the analytic or positive school in which only those rules which are actually observed by nations are regarded as international law. The distinction between *justice* and *law* has now come to be applied to international relations as it has long been understood in the narrower field of municipal relations. Within the sphere of individual states a law is such by reason of its enactment by the duly constituted authorities, irrespective of the justice or injustice of the rule which it enforces. In the same way, international law has now come to be regarded as consisting of the rules actually observed by nations, whether or not those rules embody the principles of justice which have come to be generally recognized among men. Needless to say,

this does not mean that these principles of justice have ceased to have any application to international relations. It merely means that, being no longer confounded with the facts of international observance, they are rather regarded as the standard to which it is desirable that the practice of nations should conform.

The warm reception accorded to Vattel's work immediately upon its publication is sufficient evidence that the moral foundations upon which he built his treatise and the details of the structure commended themselves to the statesmen of his day. An English translation of the work appeared as early as 1760; and this was followed by numerous subsequent editions in English, the best known being that by Chitty in 1833, as well as by editions in other foreign languages.

In testimony of the authority exercised by Vattel's treatise, one has only to turn to the decisions of the British and American courts on questions involving the rules of international law, and time and again the court will be found citing a paragraph from Vattel in support of its position. In 1799, Sir William Scott, afterwards Lord Stowell, in the case of the *Jonge Margaretha*,[22] in deciding that provisions destined to a port of naval equipment of the enemy might be treated as contraband, said: "I am aware of the favorable positions laid down upon this matter by Wolfius and Vattel, and other writers of the Continent, although Vattel expressly admits that provisions may, under circumstances, be treated as contraband." In the case of the *Maria*,[23] the same judge, in deciding that certain Swedish vessels which sailed under convoy of a Swedish armed ship for the purpose of resisting visitation and search, were subject to condemnation, expressed his estimate of the authority of Vattel in the following terms: "For the proof of this I need only refer to Vattel, one of the most correct and certainly not the least indulgent of modern professors of public law. In book iii, chap. vii. §114, he expresses himself thus: 'On ne peut empecher le transport des effets de contrabande, si l'on ne visite pas les vaisseaux neutres que l'on rencontre en mer. On est donc en droit de les visiter. Quel-

[22] 1 C. Rob., 189.
[23] 1 C. Rob., 340.

ques nations puissantes ont refusé en différents temps de se soumettre à cette visite, aujourd'hui un vaisseau neutre, qui refuseroit de souffrir la visite, se feroit condamner par cela seul, comme etant de bonne prise.' Vattel is here to be considered not as a lawyer merely delivering an opinion, but as a witness asserting the fact—the fact that such is the existing practice of modern Europe." And subsequently, in the same case, in support of the doctrine that tar, pitch and hemp, destined to an enemy, are liable to seizure as contraband, he confirmed his opinion by observing that "Vattel, the best recent writer upon these matters, explicitly admits, amongst positive contraband, 'les bois et tout ce qui sert à la construction et à l'armament de vaisseaux de guerre.' "

Turning to the decisions of the United States courts, we find as early as 1781 the case of Miller vs. the ship *Resolution*,[24] in which the federal court of appeals had to pass, *inter alia*, upon the question whether the articles of capitulation of the Island of Dominica by Great Britain to France were binding upon the United States as an ally of France, so as to protect the property of British residents in Dominica from capture. The answer of the court begins as follows: "Vattel, a celebrated writer on the law of nations, says, 'When two nations make war a common cause, they act as one body, and the war is called a society of war; they are so clearly and intimately connected that the *jus postliminii* takes place among them, as among fellow subjects.' " The court then proceeds to argue by analogy that agreements between allies with the common enemy must bind each other when they tend to accomplish the objects of the allies.

In 1814, a case was decided in the supreme court of the United States[25] in which the authority of Vattel was claimed by both the majority and the dissenting minority. Chief Justice Marshall, speaking for the majority of the court, held that British property found in the United States on land, at the commencement of hostilities with Great Britain, could not be condemned as enemy property without a legislative act authorizing its confiscation,

[24] 2 Dall, 1.

[25] Brown vs. the United States, 8 Cranch, 110.

and quoted Vattel in support of his opinion. Justice Story dissented, and after showing that down to 1737 (as evidenced by Bynkershoek), there was no question as to the right of a sovereign to confiscate the goods of the enemy found within his territory at the beginning of war, continued as follows: "Vattel has been supposed to be the most favorable to the new [contrary] doctrine. He certainly does not deny the right to confiscate; and if he may be thought to hesitate in admitting it, nothing more can be gathered from it than that he considers that, in the present times, a relaxation of the rigor of the law has been in practice among the sovereigns of Europe." And further, "Of the character of Vattel as a jurist, I shall not undertake to express an opinion. That he has great merit is conceded; although a learned civilian, Sir James MacIntosh, informs us that he has fallen into great mistakes in important 'practical discussions of public law.'"

Other cases might be cited in which the authority of Vattel was referred to by the courts in determining such diverse questions as the nature and object of war,[26] the boundary of co-riparian states,[27] what constitutes a state,[28] territorial rights over enclosed bays,[29] etc.

As in the decisions of the British and American courts, so in the debates of the congress of the United States and of the British parliament, the name of Vattel will be found appearing in connection with subjects relating to international law. In 1794, during the debate of the house of representatives upon the bill providing for additions to the federal criminal law, in the interest of preserving neutrality in the war between France and Great Britain, Mr. Smith of South Carolina was "surprised" that Mr. Madison could differ from him as to the obligations of the United States under the law of nations "after I had quoted from Vattel and the late secretary of state."[30] In 1797, when the question of

[26] United States vs. *The Active*, 24 Fed. Cases, 755.

[27] Handly's Lessee vs. Anthony, 5 Wheat. 374.

[28] Keith vs. Clark, 97 United States, 454.

[29] *The Alleganean*, Court of Commissioners of *Alabama* Claims, 1885; iv, Moore, Int. Arbitrations, 4333.

[30] Annals of Congress, 3d Congress, 754.

repealing the limitation contained in the neutrality act of 1794, was before the house, Mr. Swanwick of Pensylvania indulged in the following ironical comment upon the law of nations: "But this law of nations, of which they heard so much, was so flexible a thing, that it was become difficult to know what it was. It seemed to be a law of force, which a strong power always interpreted for a weak one. We, he said, had complained to other nations, that the law of nations had been violated in their conduct towards us; but, knowing us to be weak, they told us we were mistaken—it was no such thing; whereas, if we had been strong enough for it, we should have shown that we understood that law as well as them—so laughable a matter was become this law of nations. If a gentleman could not find his opinions supported by Vattel, he turned to Marten, and if not by him, it would not be difficult to find some other author agree with him in sentiment; indeed, he thought this famous law of nations was become little more than the law of strength." Later on, the same gentleman observed, in language not unfamiliar at the present day, that "For his own part, when he read some of these works, he thought the authors of them had spent their time to very little purpose. He believed we should understand the law of nations very well, if we had twenty ships-of-the-line to back our interpretation of it; but whilst we remained without ships, we should have to receive the law of nations from others."[31]

In 1819, when the foreign enlistment bill was being debated in the British house of commons, Sir James MacIntosh, in opposing the bill, states that "it was expressly laid down by Vattel that a nation did not commit a breach of neutrality by allowing its subjects to enter into the service of one belligerent, and refusing the same permission with respect to another."[32] Sir William Scott, speaking in favor of the bill, quoted approvingly from Vattel's definition of neutrality. In reply, Mr. Scarlett observed that "that writer [Vattel], though gifted with great ingenuity, was not much distingished for the solidity of his conc usions, and this circumstance might be accounted for by consideration

[31] Annals of Congress, 4th Congress, 2nd session, 2230, 2231, 2234.

[32] Hansard's *Parliamentary Debates*, xl, 1094.

of the circumstances under which he had written his book."[33] The "circumstances" referred to by Mr. Scarlett were apparently the fact that the Swiss nation, of which Vattel was a citizen, was in the habit of hiring its troops to any power which chose to engage them. On the other hand, Mr. Grant admitted that "Vattel was a biased judge," but said that in the present instance Vattel's "judgment was against his bias."[34]

There is an interesting reference to Vattel in the correspondence between Jefferson, as secretary of state, and Genet, the French minister, in 1793. Genet had protested against the action of Jefferson in ordering the detention of a French vessel which had been armed and equipped in the port of New York for the purpose of committing hostilities against Great Britain. Jefferson, in reply, justified the detention, and after showing that it was not in violation of the treaties between the United States and France, continued as follows: "You think, Sir, that this opinion is also contrary to the law of nature and usage of nations. We are of opinion it is dictated by that law and usage; and this had been very materially inquired into before it was adopted as a principle of conduct. But we will not assume the exclusive right of saying what that law and usage is. Let us appeal to enlightened and disinterested judges. None is more so than Vattel." He then quoted at length Vattel's doctrine as to the obligations of neutrality. Genet thereupon lost his temper and retorted with sarcasm: "You oppose to my complaints, to my just reclamations, upon the footing of right, the private or public opinions of the President of the United States; and this aegis not appearing to you sufficient, you bring forth aphorisms of Vattel to justify or excuse infractions committed on positive treaties."[35, 36]

[33] *Ibid.*, 1235.

[34] *Ibid.*, 1246.

[35] American State Papers, i, 154–155.

[36] A second article presenting a critical estimate of the actual rules of international law formulated by Vattel will appear in a later issue of the Journal.